

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/296/2020

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of M/s. **Thai Summit Autoparts India Private Limited***

NISSIN ABC Logistics Private Limited

Represented by its Director

Mr. Navin Panpalia,

Unit No.222, 244, 247, 2nd Floor,

Centrum Plaza,

Golf Course Road, Sector – 53,

Gurgaon, Haryana – 122 002

... Operational Creditor

-Vs-

M/s. Thai Summit Autoparts India Private Limited,

Represented by its Managing Director

Plot No.4, SIPCOT Industrial Park,

Vallam Vadagai Village,

Sriperumbudur,

Kancheepuram – 602 105

... Corporate Debtor

Order pronounced on 12th April 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : Inthu Karunakaran, Advocate

For Corporate Debtor : None present

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This is an Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC,2016"*) by

NISSIN ABC Logistics Private Limited, (*hereinafter referred as Operational Creditor*) seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Thai Summit Autoparts India Private Limited** (*hereinafter called as Corporate Debtor*).

2. From Part I of the Application, it is seen that this Applicant is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. From Part II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 18.01.2013 having Corporate Identification Number CIN : U29253TN2013PTC089421 and as per the Application the Registered Office address of the Corporate Debtor is stated to be situated at Plot No.4, SIPCOT Industrial Park, Vallam Vadagai Village, Sriperumbudur, Kancheepuram – 602 105.

3. Part III of the Application discloses the fact that Applicant has not proposed the name of an Interim Resolution Professional (IRP) and left it to the discretion of this Tribunal to appoint the IRP. From Part IV of the Application it is seen that the Operational Creditor has claimed a sum of Rs.9,13,186/- and interest at the rate of 24% p.a. which comes to the tune of Rs.5,94,446/- as due and payable by the Corporate Debtor.

4. Part V of the Application discloses the list of Invoices, Debit notes raised by the Operational Creditor against the Corporate Debtor along with the Statement of Accounts.

5. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor provide Air & Sea Export & Import shipments services to the Corporate Debtor for transporting consignment from Chennai to Bangkok and to other places since the year 2014. It was submitted that the total value of the services rendered by the Operational Creditor to the Corporate Debtor since the year of 2014 till 2017 is Rs.1,14,64,414/- out of which the Corporate Debtor has paid a sum of Rs.1,05,15,556/- and there remains a sum of Rs.9,48,858/- to be paid by the Corporate Debtor to the Operational Creditor, which is admittedly payable for handling and delivering the shipments as per the instructions of the Corporate Debtor between 25.08.2016 and 14.11.2016 at Bangkok.

6. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has raised three Invoices on 25.09.2016, 31.12.2016 and 05.05.2017 and the debt fell due when the last invoice has become due and payable i.e. on 05.05.2017. Further, it was submitted that 3 Debit Notes were

raised against the Corporate Debtor on 25.09.2016, 31.10.2016 and 31.12.2016. It was submitted by the Learned Counsel for the Operational Creditor that despite several request and demands being made by the Operational Creditor, the Corporate Debtor had failed to make payments of the admitted debt amount to the Operational Creditor.

7. The Learned Counsel for the Operational Creditor submitted that, the Operational Creditor has issued the statutory Demand Notice as mandated under Section 8 of IBC, 2016 to the Corporate Debtor on 05.06.2018, and the Operational Creditor has also filed an Affidavit under Section 9(3)(b) of IBC, 2016 which is placed at page No. 76 of the typed set filed along with the Application. It was submitted by the Learned Counsel for the Operational Creditor, that inspite of serving the Demand Notice, the Corporate Debtor has not paid the balance outstanding nor raised any dispute in relation to the amounts being paid to the Operational Creditor. In the circumstances, Learned Counsel for the Operational Creditor has submitted that debt and default on the part of the Corporate Debtor are proved and as such prayed for initiation of the CIRP against the Corporate Debtor.

8. In relation to the Corporate Debtor it is seen from the records that the matter first came up for hearing on 18.01.2021 before this Tribunal. Thereafter, it is seen that this Tribunal had ordered notice to be issued to the Corporate Debtor and accordingly, the Operational Creditor issued notice to the Corporate Debtor and filed Affidavit of Service vide Diary No. 931 dated 16.02.2021. A perusal of the said Affidavit of Service manifests the fact that the notice has been served to the Corporate Debtor on 11.02.2021 to their Registered Office address. In spite of notice being served, it is seen that the Corporate Debtor has not preferred to appear before this Tribunal and is deliberately avoiding to cause appearance before this Tribunal for the reasons best known to it.

9. From the submission made by Learned Counsel for the Operational Creditor and from the documents placed in support of the claim being made in Part IV of the Application, it is seen that the claim as made by the Operational Creditor is not disputed and the Corporate Debtor is liable to pay the said sum to the Operational Creditor and has committed a default in payment of the same.

10. Further, the said debt fell due on the last date of invoice being 05.05.2017 and the present Application is being filed before this Tribunal on 23.01.2020 and hence the present Application falls well within the period of limitation.

11. Thus the Operational Creditor has proved the existence of an 'Operational debt' and its 'default' on the part of the Corporate Debtor and in the absence of any objection being raised by the Corporate Debtor, we are of the considered view that the Corporate Debtor has committed 'default' in the repayment of the 'Operational debt' to the Operational Creditor and in the said circumstances we are constrained to initiate the CIRP in relation to the Corporate Debtor.

12. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the present Application has been filed on 23.01.2020, which is well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and as such this Tribunal has got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said

circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

13. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **T.V. Nataraja Subramanian** with Registration No. **IBBI/IPA-002/IP-N01010/2020-2021/13273** (email id:- *tvn.subramanian@gmail.com*) as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under

the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated

on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

14. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

15. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

16. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond